

APPEAL NO. 042236
FILED OCTOBER 29, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 3, 2004. The record closed on August 10, 2004. The hearing officer determined that the _____, compensable injury of respondent (claimant) includes a ganglion cyst, and that claimant had disability from March 10, 2004, through the date of the hearing. Appellant (carrier) appealed these determinations on sufficiency grounds. Carrier also complains that the hearing officer: (1) added an issue over its objection; (2) refused to place all arguments on the record; and (3) erred in admitting a document that was not timely exchanged. Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm as reformed

Carrier contends the hearing officer erred in adding an issue regarding extent of injury. In this case, there was an issue before the hearing officer regarding disability. We acknowledge that the hearing officer had to consider what the injury consisted of before he could determine the cause of any disability after March 10, 2004. Claimant said she had stopped working on March 10, 2004, because her cyst had grown larger and she was having pain and cramps in her hand. The dispute between the parties was whether the ganglion cyst was related to the compensable injury and, thus, whether claimant had been off work due to the compensable injury. We will assume, without deciding, that the hearing officer erred in adding an issue of extent of injury over carrier's objection. Even assuming it was error to formally add the issue, however, we perceive no reversible error under the facts of this case. We will strike the finding that the compensable injury includes a ganglion cyst because it was not necessary to make an express finding on extent of injury. Because we are striking the determination regarding extent-of-injury, we need not address carrier's contention that the evidence does not support this determination.

Carrier contends the hearing officer erred in admitting Claimant's Exhibit No. 4. Carrier asserts that the document was not timely exchanged. Claimant's Exhibit No. 4 is a notice preauthorizing surgery for the cyst, dated July 8, 2004. Even assuming that the document was not timely exchanged, we conclude that carrier has not shown that any error was reasonably calculated to cause and probably did cause the rendition of an improper decision in this case. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; *see also Hernandez v. Hernandez*, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ).

Carrier contends that the hearing officer erred in refusing to place all arguments on the record. The hearing officer held the record open for additional evidence

regarding extent of injury. On August 9, 2004, carrier submitted additional evidence, which was considered by the hearing officer. When it submitted the additional evidence, carrier asked for additional oral argument on the issue of extent of injury, which the hearing officer did not permit. Carrier did include a brief written argument regarding the additional evidence submitted. We perceive no reversible error in this case.

We have reviewed the complained-of determination regarding disability and conclude that the issue involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. There was evidence of a change in claimant's condition and that her disability recurred. There was medical evidence that the cyst is related to the compensable injury. We conclude that the hearing officer's determinations are supported by the record and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

As reformed, we affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Gary L. Kilgore
Appeals Judge